

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>DORIS J. WOODS</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 157,026
<b>STATE OF KANSAS</b>	)	
Respondent	)	
AND	)	
	)	
<b>STATE SELF-INSURANCE FUND</b>	)	
Insurance Carrier	)	
AND	)	
	)	
<b>WORKERS COMPENSATION FUND</b>	)	

**ORDER**

Claimant requested review of the Award dated March 11, 1997, entered by Administrative Law Judge John D. Clark. The Appeals Board heard oral argument on August 27, 1997, in Topeka, Kansas.

**APPEARANCES**

Martin E. Updegraff of Wichita, Kansas, appeared for claimant. Jeffery R. Brewer of Wichita, Kansas, appeared for respondent. Edward D. Heath, Jr., of Wichita, Kansas, appeared for the Workers Compensation Fund.

**RECORD AND STIPULATIONS**

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

**ISSUE**

The Administrative Law Judge awarded claimant benefits based upon a 100 percent permanent partial disability. Claimant requested the Appeals Board to review the issue of nature and extent of disability. Specifically, claimant seeks a permanent total disability award. Claimant also seeks future medical treatment be specifically authorized with Bernard T. Poole, M.D.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Appeals Board finds as follows:

The Award should be modified to award permanent total disability benefits and future medical treatment.

The parties stipulated claimant sustained personal injury by accident arising out of and in the course of her employment with respondent on January 9, 1990. On that date claimant injured her back while moving a file cabinet.

Board-certified orthopedic surgeon, Bernard T. Poole, M.D., treated claimant and performed a total of four surgeries. Although claimant improved from the second surgery, she continues to experience debilitating pain. The Administrative Law Judge found claimant has a 22.5 percent whole body functional impairment as a result of the work-related accident. The parties do not dispute that finding. Respondent contends the accident at work did not cause all of claimant's disability. Claimant alleges she is permanently, totally disabled as a direct result of the work-related accident.

The greater weight of evidence establishes that claimant has suffered a severe debilitating injury as a result of her accident. Claimant testified that she is incapable of working. Likewise, the treating physician, Dr. Poole, testified he does not believe claimant is employable in any capacity. Similarly, respondent's expert medical witness, board-certified orthopedic surgeon Robert A. Rawcliffe, M.D., indicated claimant was unemployable in her present condition. Although Dr. Poole and Dr Rawcliffe agreed claimant has problems other than her back which combine to render her unemployable, those other conditions are found to be directly traceable to the back injury. As Dr. Rawcliffe put it, the chain of events started with the original injury at work. Thereafter, she developed complications from the surgeries including chronic pain syndrome and depression.

Claimant's vocational rehabilitation expert, Jerry D. Hardin, testified he does not believe claimant is employable in any capacity. He does not believe he could find claimant any substantial and gainful employment. In his opinion, the claimant's ability to perform work in the open labor market has been reduced 100 percent by the work-related accident. Because claimant is essentially unemployable, Mr. Hardin believes her loss of wage-earning ability is also 100 percent.

Permanent total disability is described in K.S.A. 1989 Supp. 44-510c(a)(2) as follows:

"Permanent total disability exists when the employee, on account of the injury, has been rendered completely and permanently incapable of engaging in any type of substantial and gainful employment . . . ."

When considering the entire record, the Appeals Board finds claimant is incapable of engaging in any type of substantial and gainful employment and, therefore, claimant is entitled to receive permanent total disability benefits under the provisions of K.S.A. 44-510c.

Both Dr. Poole and Dr. Rawcliffe testified that claimant would benefit from continued treatment. Accordingly, future medical treatment is authorized with Dr. Poole.

The Appeals Board hereby adopts the Administrative Law Judge findings and conclusions as set forth in the Award to the extent they are not inconsistent with the above.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark, dated March 11, 1997, should be, and is hereby, modified as follows:

**WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR** of the claimant, Doris J. Woods, and against the respondent, State of Kansas, and its insurance carrier, State Self-Insurance Fund, and the Kansas Workers Compensation Fund, for an accidental injury which occurred January 9, 1990, and based upon an average weekly wage of \$338.70 for 203.37 weeks of temporary total disability compensation at the rate of \$225.81 per week or \$45,922.98, followed by 350.19 weeks of permanent total compensation in the sum of \$225.81, per week for a permanent total disability, making a total award of \$125,000.00.

As of August 31, 1997, there is due and owing claimant 203.37 weeks of temporary total disability compensation at the rate of \$225.81 per week or \$45,922.98, followed by 195.34 weeks of permanent partial compensation at the rate of \$225.81 per week in the sum of \$44,109.73 for a total of \$90,032.71, which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$34,967.29 is to be paid for 154.85 weeks at the rate of \$225.81 per week, until fully paid or further order of the Director.

The Appeals Board hereby adopts the remaining orders set forth by the Administrative Law Judge to the extent they are not inconsistent with the above.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1997.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Martin E. Updegraff, Wichita, KS  
Jeffery R. Brewer, Wichita, KS  
Edward D. Heath, Jr., Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director